

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

LAURA TAFE, ADMNISTATRIX OF THE	)	
ESTATE OF LUANA HEIKES,	)	
Plaintiff	)	C.A. NO.: 1:15-cv-195
	)	
v.	)	
	)	
R.GALUSHA TRANSPORT, LLC AND	)	
STEVEN M. BARNABY.	)	
Defendants	)	

**NOTICE OF REMOVAL OF DEFENDANTS**  
**R. GALUSHA TRANSPORT, LLC AND STEVEN M. BARNABY**

TO THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE:

The petition of the defendants, R. GALUSHA TRANSPORT, LLC and Steven M. Barnaby, by their attorneys, Boyle, Shaughnessy & Campo, P.C., for removal of this action from the Grafton County Superior Court of the State of New Hampshire, County of Grafton, to the United States District Court for the District of New Hampshire respectfully shows:

FIRST: That the petitioners herein are defendants in a civil action brought against them in the Grafton County Superior Court of the State of New Hampshire, County of Grafton, New Hampshire, entitled "Laura Tafe, Administatrix of the Estate of Luana Heikes v. R. Galusha Transport, LLC and Steven M. Barnaby." (**See the *Complaint and Request for Jury Trial***, in that action attached hereto as **Exhibit A.**) Said action was filed May 4, 2015 and bears Civil Action No.:215-2015-CV-123.

SECOND: That the aforesaid action has not yet commenced as to R. Galusha Transport, LLC as there has been no service of a Summons and Complaint upon the defendant, R. Galusha Transport, LLC, and the action has not yet commenced as to Steven M. Barnaby as there has been no service of a Summons and Complaint upon the defendant, Steven M. Barnaby. However,

the plaintiff's attorney mailed the undersigned attorney a copy of the complaint as it was filed in Grafton County. By filing this petition, the petitioners/defendants in this action have not waived service under FED.R.CIV.P. 4(e) and 4(h).

THIRD: As there has been no service, the petitioners/defendants, R. Galusha Transport, LLC and Steven M. Barnaby, have not yet filed a responsive pleading to the Plaintiff's Complaint.

**STATUTORY REQUIREMENTS – 28 U.S.C. §§ 1332, 1441, and 1446**

FOURTH: The petitioners timely file this petition, pursuant to 28 U.S.C. § 1446, which provides, "The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter." 28 U.S.C. § 1446 (2011). Here, the petitioners file this petition within thirty days of receipt of the letter from the plaintiff's attorney; however, again, the petitioners/defendants do not waive service under FED.R.CIV.P. 4(e) and 4(h).

FIFTH: That as set forth in the Complaint, the decedent in this wrongful death action was an individual, Luana Heikes, who resided in Canaan, New Hampshire.

FIFTH: The defendant, R. Galusha Transport, LLC, is a Limited Liability Company with a principal place of business in New York.

SIXTH: The defendant, Steven M. Barnaby, is an individual who resides in S. Glens Falls, New York.

SEVENTH: That, by reason of the above, the above-captioned action is a civil action brought in a state court of which the United States District Courts have jurisdiction under the provisions of Title 28, U.S.C. § 1332 (2011) and is one which may be removed to this Court by

the petitioners, defendants therein, pursuant to the provisions of Title 28, U.S.C. Section 1332(a) (2011) and Sections 1441 and 1446.

EIGHTH: There is diversity of citizenship under 28 U.S.C. § 1332 (a) (2011), where defendant R. Galusha Transport, LLC is a limited liability company with a principal place of business in New York, Steven M. Barnaby is an individual resident of New York, and Plaintiff is a resident of New Hampshire.

NINTH: R. Galusha Transport, LLC membership consists of one member, Real Bark Mulch, LLC, a New York company, which is comprised of all New York members.

TENTH: The amount in controversy is likely to exceed \$75,000, where plaintiff claims damages for pain and suffering, loss of earning capacity, loss of life, loss of enjoyment of life, attorney's fees, and all other damages and losses allowed by New Hampshire law and the petitioners/defendants dispute liability and damages.

#### **PROCEDURAL REQUIREMENTS AND LOCAL RULES**

ELEVENTH: This Court is part of the "district and division" embracing the place where this action was filed – Grafton County, New Hampshire. See 28 U.S.C. §§ 1441(a), 1446(a) (2011).

TWELFTH: All defendants who have been properly joined and served in this matter have consented to removal of the State Court Action. See 28 U.S.C. § 1446(b) (2) (A) (2011).

THIRTEENTH: Attached as Exhibit A is a copy of all process, pleadings, and orders received by the defendants in the State Court Action. See 28 U.S.C. § 1446(a) (2011). Pursuant to Local Rule 81.1(c), the defendants will file certified or attested copies of all records, proceedings, and docket entries in the state court within fourteen (14) days of the filing of this Notice of Removal. The defendants have paid the appropriate filing fee to the Clerk of Court upon the filing of this Notice.

FOURTEENTH: The defendants will promptly serve upon all parties, and file with the Clerk of the Superior Court of Grafton County, New Hampshire, a Notice of Removal, pursuant to 28 U.S.C. § 1446(d)(2011), a Copy of which is attached hereto as *Exhibits B* and *C*, with exhibits omitted.

FIFTEENTH: This Notice of Removal is signed pursuant to FED.R.CIV.P. 11. See 28 U.S.C. § 1446(a)(2011).

### **CONCLUSION**

Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 (2011), and the State Court Action may be removed to this Court under 28 U.S.C. §§ 1441 and 1446 (2011).

WHEREFORE, the petitioners pray that this cause proceed in this Court as an action properly removed thereto.

THE DEFENDANTS,  
R.GALUSHA TRANSPORT, LLC and  
STEVEN M. BARNABY  
BY THEIR ATTORNEYS,

DATED: 06/01/2015

/s/ Thomas J. Fay  
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### **CERTIFICATE OF SERVICE**

I, Thomas J. Fay, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 1<sup>st</sup> day of June, 2015.

**ATTORNEY FOR PLAINTIFF**

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/s/ Thomas J. Fay, Esq.